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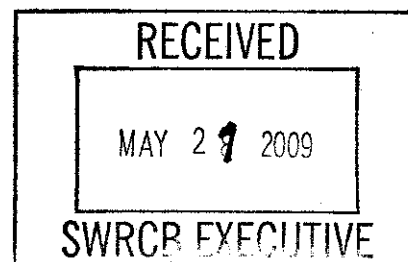


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May 26, 2009



State Water Resources Control Board
Office of Enforcement
1001 I Street
Sacramento, CA 95814

Attention: Jeanine Townsend, Clerk to the Board

Re: Water Quality Enforcement Policy Workshop 6/4/09

Via e-mail commentletters@waterboards.ca.gov and U.S. Mail

Members of the State Water Resources Control Board and Office of Enforcement Staff:

The Regional Council of Rural Counties (RCRC) appreciates the opportunity to provide comments on the draft Water Quality Enforcement Policy (Enforcement Policy) dated May 6, 2009. RCRC represents thirty rural counties in which the incorporated and unincorporated communities are primarily small communities.

As previously stated in our comments at the January 16, 2009 staff workshop and in our written comments dated January 26, 2009 on the December 18, 2008 draft Enforcement Policy, RCRC greatly appreciates the inclusion in the Enforcement Policy of policies that will help bring a facility serving a small and/or disadvantaged community into compliance through education, help seeking solutions to resolve violations, assistance in identifying funding, etc.

RCRC appreciates many of the changes made to the December 18, 2008 version of the Enforcement Policy. These include:

- The clarification that small communities, ("small and/or disadvantaged communities) as well as disadvantaged communities, may benefit from informal enforcement and/or compliance assistance as the first step taken to return a community to compliance (Page 3).
- The inclusion of "local" agencies in the statement relating to the Water Boards working cooperatively with other agencies when violations, for which the agency is not responsible, occur on lands owned or managed by the agency (Page 10).

- The addition of a maximum amount per gallon dollar cap (with the per gallon factor for discharges) for municipal sewage spills and stormwater (Page 15).
- The addition of a maximum amount per gallon dollar cap for recycled water (with the per gallon factor for discharges) for releases of recycled water that has been treated for irrigation and groundwater recharge (Page 15).
- The inclusion of a definition of "Discharge Monitoring Report" in Special Circumstances (i.e. where there is a discharge to surface waters and the discharger fails to conduct any monitoring during the monitoring period and where there is no discharge to surface waters) under Section 13385.1 (Pages 30-32).
- The inclusion of a requirement that the Water Board, when requiring technical or monitoring reports from a discharger, must ensure that the burden, including costs, shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from them (Page 38).

Additionally, a variety of other changes throughout the Enforcement Policy add greatly to the clarity of the document. These include the deletion of the word "indirect" on Page 5, the substitution of the word "substantially" for "completely" on Page 5, etc.

State Water Board Enforcement Action (Page 9)

The Enforcement Policy provides that in certain situations the State Water Board may take enforcement actions in lieu of the Regional Water Board. While it may be that such action of the part of the State Water Board may be infrequent, the Enforcement Policy should include a description of the processes to be followed.

One of the examples given as to when the State Water Board may take enforcement action is "In response to petitions alleging inaction or ineffective enforcement action by a Regional Water Board". The Enforcement Policy should contain a description of the petition process.

The Enforcement Policy specifies that an enforcement action by the State Water Board may be brought before the State Water Board or the Regional Water Board as "may be deemed appropriate" for the particular action. RCRC believes that the hearing process should be described in detail in the Enforcement Policy.

Per Gallon Assessments for Discharge Violations (Page 14-15)

As noted in our January 26, 2009 comments, RCRC appreciates the fact that State Water Board staff is seeking to identify the types of releases/spills where it is appropriate to impose a reduced per gallon/per day assessment. RCRC supports the addition of a per gallon/per day assessment cap (maximum of \$2.00 per gallon) for municipal sewage spills and discharges of municipal stormwater. RCRC also supports the addition of a per gallon/per day assessment cap for releases of recycled water that

has been treated for irrigation and groundwater recharge. RCRC believes, however, that the per gallon/per day assessment cap for treated water should be lower than the \$1.00 proposed in the Enforcement Policy.

Violator's Conduct Factors/History of Violations (Page 18)

The Enforcement Policy provides three additional factors that should be considered for modification of the amount of initial liability. One of the factors is a history of repeat violations. The Enforcement Policy specifies that where there is a history of repeat violations the amount of the initial liability should be increased by a minimum of 10%.

RCRC urges that additional flexibility be provided when considering the history of violations. We believe it would also be appropriate to allow consideration of good-faith efforts to rectify instances of non-compliance.

Multiple Instances of the Same Violation (Pages 19-20)

RCRC has, in each of our written comments on the various versions of the Enforcement Policy, urged that the Enforcement Policy specify that a repeat violation of the same pollutant is necessary to trigger a MMP. RCRC continues to believe that this is a logical interpretation of the law, as the statute species "a" violation. The delay in assessment of the penalty can be reasonably interpreted as intended to provide time for the discharger to correct the problem for the pollutant violating the effluent limitation.

Monetary Assessments

In the May 6, 2009 draft of the Enforcement Policy an alternative (Alternative 2, Page 26) to the Penalty Calculation Methodology contained in the Enforcement Policy (Pages 10-25) is included for comment. Alternative 2 proposes to establish a Monetary Liability Recommendation Panel (Panel) comprised of the Director of the Office of Enforcement, the Deputy Director responsible for Water Quality Programs, and the Assistant Executive Officers from three of the Regional Water Boards (rotated). The Panel would be charged with recommending a monetary civil liability assessment to the Water Board enforcement staff, and the recommendation would be required to be evaluated by the Water Board when assessing the amount of administrative civil liability after hearing.

Given the lack of detail provided in Alternative 2, as compared to the improved Alternative 1, RCRC prefers Alternative 1. Alternative 1 provides more transparency as to how penalties are calculated.

Mandatory Minimum Penalties for Small Communities (Page 29)

In our January 26 comment letter, RCRC pointed to language relating to the ability of the POTW to present alternative justification to the Regional Water Board for designation as a "POTW serving a small community". The justification must include, among other things, "the number of people actually served by the POTW." RCRC continues to be concerned that this language could be interpreted to require a household by household survey of the number of persons residing in each of the

households served by the POTW. RCRC suggests that this section be changed to read as follows:

The justification must include a map of service area boundaries, a list of properties, the number of households served, the estimated number of people served by the POTW, and any additional information requested by the Regional Water Board.

Discharge Monitoring Report in Special Circumstances (Pages 29-32)

RCRC strongly supports the addition of the definition of a "Discharge Monitoring Report" Where There Is No Discharge to Surface Waters. RCRC urges the addition of a requirement that the Water Boards notify the permittee in writing that they may be subject to MMPs for failure to submit a report. This notification should be required to be made as soon as possible after a determination is made that the permittee may be in violation of the law.

Small and/or Disadvantaged Communities

As previously stated, RCRC appreciates the efforts of State Water Board staff to include in the Enforcement Policy policies that assist small and/or disadvantaged communities. RCRC urges State Water Board staff to consider several additional changes to the Enforcement Policy as proposed by the Clean Water Associations' Joint Comments dated January 30, 2009. These include: 1) making the adjustment factor (minimum increase of 10%) when considering the history of violations discretionary for small and/or disadvantaged communities; 2) giving the Water Boards discretion to waive the cost of investigation and enforcement for small and/or disadvantaged communities; and, 3) making the Economic Benefit adjustment for small and/or disadvantaged communities discretionary.

In conclusion, RCRC appreciates the opportunity to provide comments on the draft May 6, 2009 Enforcement Policy. Please feel free to contact me at (916) 447-4806 or kmannion@rcrcnet.org if you have any questions.

Sincerely,



Kathy Mannion
Legislative Advocate